**IN THE COURT OF APPEALS OF IOWA**

No. 6-564 / 05-1891
Filed March 14, 2007

**AFSCME IOWA COUNCIL 61,**
Petitioner-Appellant,

**vs.**

**STATE OF IOWA, DEPARTMENT OF PERSONNEL,**
Respondent-Appellee,

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Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.

Union appeals from district court ruling that denied its petition to set aside an arbitration award in favor of the State. **AFFIRMED**.

Nathaniel R. Boulton, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and George A. Carroll, Assistant Attorney General, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**MILLER, J.**

AFSCME Iowa Council 61 (AFSCME) appeals from a district court ruling that denied its petition to set aside an arbitration award in favor of the State of Iowa, Department of Personnel. We affirm the district court.

**I. Background Facts and Proceedings.**

AFSCME is a union that represents certain state, as well as county and municipal, employees. AFSCME and the State of Iowa have entered into a collective bargaining agreement (CBA) that is applicable to all AFSCME state employee bargaining units.

On October 25, 2002, a grievance was filed by "Group Local 2659 Susan Baker."[1] The grievance alleged the University of Northern Iowa (UNI) had violated Article VI, Section 2(C) of the CBA, which provides, "An agency may not layoff permanent employees until they have eliminated all non-permanent employees within the layoff unit in the same classification in the following order: emergency, temporary, provisional, intermittent, trainee, and probationary." Specifically, the union alleged UNI had failed to eliminate non-permanent, student employees prior to laying off permanent bargaining unit employees.

The parties agreed to waive Steps 1 and 2 of the grievance procedure, and proceeded directly to Step 3. In his Third Step Answer the hearing officer concluded there had been no violation of the CBA, and denied the grievance. The group grievance, and eight other individual grievances, proceeded to binding arbitration. As an initial matter, the arbitrator, Gerald Cohen, determined the

[1] Baker's precise role in this matter is not made clear by the record. We presume she is a union representative or an in-pay-status spokesperson of the group of grievants contemplated in CBA Article IV, Section 8.

group grievance was not arbitrable because the grievance form did not state the names of all the employees who had authorized filing the grievance as required by Article IV, Section 1(B) of the CBA.

Cohen then addressed the merits of the individual grievances. He began by considering prior arbitration decisions involving the CBA. Cohen determined the prior awards were persuasive authority rather than binding precedent. He did, however, consider a prior arbitration decision rendered by Harry Graham, and subsequent related litigation, "critical to the decision of this case."

The *Graham* arbitration involved a situation similar to the present matter—in 1991 the University of Iowa had retained student workers while permanent bargaining unit employees were laid off. Graham sustained a grievance filed by AFSCME, determining student workers fell within the definition of "non-permanent employees" in Article VI, Section 2(C). The district court denied the State's request to set aside the arbitration decision, and the State appealed.

While the appeal was pending, AFSCME and the State entered into a settlement agreement. With a limited exception inapplicable to this case, the parties agreed the *Graham* arbitration and subsequent district court decision would have no precedential effect. They further agreed:

> 13. Upon execution of this agreement, the Union releases the State from any liability, including all claims, demands, and causes of action of every nature affecting it and its membership which it may have or ever claim to have arising from the retention of students employed in student status positions at the University of Iowa, Iowa State University and the University of Northern Iowa.
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> 14. The parties further agree, that the persons specifically excluded from the coverage of the Iowa Public Employment Relations Act as provided in Section 20.4 of the Iowa Code, are not covered by the parties['] collective bargaining agreement in general, and specifically the layoff provisions of the collective bargaining agreement.

Cohen looked to the language of paragraph 13, in particular the portion releasing any claim, demand, or cause of action the union "may . . . ever claim to have arising from the retention of students employed in student status positions," and concluded the settlement "encompassed this grievance and precludes the Union from grieving the retention of regent student workers while AFSCME bargaining unit employees are laid off." He recognized a contrary conclusion had been reached in the recent *Nathan* arbitration, which interpreted the settlement as being "limited to the Graham case . . . ." He declined to follow *Nathan*, however, and set forth numerous reasons why he believed its interpretation of the settlement agreement was in error. Determining "the settlement is conclusive," Cohen denied the grievances.

AFSCME filed a petition with the district court, seeking to set aside the arbitration award. The court denied the petition, concluding (1) Cohen did not exceed his authority in determining he was not required to give preclusive effect to the *Nathan* arbitration, given that the issues in the *Nathan* arbitration were not identical to those in the present matter, (2) Cohen's rejection of the group grievance, based upon his interpretation of Article IV, Section 1(B), was drawn from the essence of the agreement, and (3) Cohen was entitled to read and interpret the *Graham* settlement.

This appeal by AFSCME followed. On appeal, AFSCME asserts the arbitration award must be set aside because Cohen exceeded his authority when he failed to follow prior arbitration decisions, in particular *Nathan*; the settlement in *Graham* was "misapplied"; and the group grievance was in fact arbitrable.

**II. Standards of Review.**

The "threshold" question in such cases is whether the parties agreed to settle the disputed issue by arbitration. *Postville Cmty. Sch. Dist. v. Billmeyer*, 548 N.W.2d 558, 560 (Iowa 1996). It is our obligation to answer this question as a matter of law, based on the construction and interpretation of the parties' agreement. *Id*. "Because the law favors arbitration, the court's duty is to construe the agreement broadly." *Id*.

The court's role in such cases is strictly limited to determining whether the dispute was arbitrable, and whether the arbitrator exceeded the scope of his or her authority. *Id*. Thus, the court should consider only (1) whether the grievant alleged a violation of the CBA, and (2) whether the CBA's grievance procedure authorizes arbitration of the particular dispute. *See id*. Beyond these two questions, judicial inquiry into the merits of the dispute is not permitted. *Id*.

A court will not presume an arbitrator has exceeded his or her authority merely because it might disagree with the arbitrator's reasoning. *Cedar Rapids Ass'n of Fire Fighters, Local 11 v. City of Cedar Rapids*, 574 N.W.2d 313, 318 (Iowa 1998). An arbitration award will be upheld so long as it "'drew its essence' from the collective bargaining agreement." *Id*. at 316 (quoting *Sergeant Bluff-Luton Educ. Ass'n v. Sergeant Bluff-Luton Cmty. Sch. Dist*., 282 N.W.2d 144, 148 (Iowa 1979)). An award draws its essence from the agreement

> so long as the interpretation can in some rational manner be derived from the agreement, "viewed in the light of its language, its context, and any other indicia of the parties' intention; only where there is a manifest disregard of the agreement, totally unsupported by principle of contract construction and the law of the shop, may a reviewing court disturb the award." Neither the correctness of the arbitrator's conclusion nor the propriety of his reasoning is relevant to a reviewing court, so long as his award complies with the

> aforementioned standards to be applied by the reviewing court in exercising its limited function.

*Id*. at 318 (citations omitted).

**III. Discussion.**

We begin with the threshold question in this matter—arbitrability of the group grievance. AFSCME asserts the district court erred in determining the group grievance was not arbitrable, pointing out that group grievances are specifically recognized in CBA Article IV, Section 8, and have been a part of every contract between the parties since 1977. To the extent AFSCME asserts the arbitrator determined group grievances were not allowed under the CBA, its assertion is factually flawed. The arbitrator in fact determined only that this particular group grievance was not authorized under the CBA because the grievants failed to comply with one of the requirements found in Article IV, specifically Section 1(B)'s requirement that "[t]he grievance form will state the name of the employee(s) authorizing the filing of the grievance."

The arbitrator interpreted the foregoing provision as authorizing a group grievance only when the grievance form listed the names of each individual employee that authorized the filing of the grievance. AFSCME contends that in reaching this conclusion, Cohen ignored evidence of the parties' past practice to allow group grievances under the CBA even if not all employees were listed. However, as the State points out, past practices are merely one thing to consider in determining whether the arbitrator's interpretation of a contract term drew its essence from the agreement.

In light of the foregoing, we cannot say Cohen's interpretation "is a manifest disregard of the agreement, totally unsupported by principle of contract

construction and the law of the shop . . . ." *Cedar Rapids Ass'n of Fire Fighters*, 574 N.W.2d at 318. We therefore agree with the district court's determination that this particular portion of the arbitration award drew its essence from the CBA.

We accordingly turn to the binding effect of the *Nathan* arbitration. The concept of issue preclusion is applicable in successive arbitrations if the issues are identical. *Deerfield Const. Co. v. Crisman Corp*., 616 N.W.2d 630, 632 (Iowa 2000). Absent an agreement that the arbitrator is to decide issues of arbitrability, such issues, including questions of issue preclusion, are to be determined by the courts.[2] *Id*.

> Before issue preclusion will be found, four elements must be satisfied:
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> (1) the issue concluded must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior action; and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

*Hunter v. City of Des Moines*, 300 N.W.2d 121, 123 (Iowa 1981).

The parties focus on the first element of issue preclusion, i.e., whether the issues in two arbitrations are identical. However, we find it unnecessary to parse the language of the two awards, and wrestle with the issue of form versus substance, in an effort to determine whether this particular element has been satisfied. The fourth element of issue preclusion clearly is not present in this case.

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[2] The parties have not cited, and we have not found, whether in the CBA, the Graham settlement agreement, or otherwise, any agreement that the arbitrator is to decide issues of arbitrability. CBA Article IV, Section 2(D)(1), concerning "Grievance Arbitration," in fact provides: "The arbitrator shall only have authority to determine the compliance with the provisions of this Agreement."

The arbitrator in *Nathan* was asked to resolve whether AFSCME had "the contractual right to grieve the issue of the retention of student employees when permanent employees are laid off," and whether UNI violated the CBA under the particular facts of that case. In answering these questions, the arbitrator did opine that the parties' settlement was limited to the facts of the *Graham* arbitration, and that student employees fell within the Section 2(C)'s definition of "non-permanent employees." However, the arbitrator ultimately denied AFSCME's grievance, in relevant part, because he concluded the student employees in that particular case were not in the "same classification" as the grievant. Thus, the arbitrator's interpretations of the *Graham* settlement and Section 2(C) were neither necessary nor essential to the resolution of the grievance.

Because the test for issue preclusion is not met, Cohen was not bound by the *Nathan* arbitration. He was therefore free, as the district court noted, to "read and interpret the *Graham* settlement in light of the issues raised in this arbitration award."

This brings us to the last claim raised by AFSCME, that Cohen "misapplied" the Graham settlement because his interpretation of the settlement agreement is "illogical." In addressing this claim, we have reviewed the language of the *Graham* settlement, in particular paragraphs thirteen and fourteen. We have also reviewed Nathan's interpretation of the settlement, and the rather thorough analysis engaged in by Cohen, in which he considered the language of the agreement, the implications of his interpretation, and the parties' prior treatment of the issue.

As previously noted, it is not for this court to determine whether Cohen's interpretation is correct. All that need be shown, in order to uphold the arbitration award in this matter, is that Cohen's interpretation "can in some rational manner be derived from the agreement, 'viewed in the light of its language, its context, and any other indicia of the parties' intention . . . .'" *Cedar Rapids Ass'n of Fire Fighters*, 574 N.W.2d at 318 (citation omitted). We conclude this standard has been met. We accordingly affirm the district court order that denied AFSCME's petition to set aside the arbitration award.

**AFFIRMED.**